

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:)
)
)
JAMES E. WORTHY,) CASE #: 14 - 32013
)
) CHAPTER 13
)

**AMENDED MOTION FOR AUTHORITY TO SELL REAL AND PERSONAL PROPERTY
FREE AND CLEAR OF LIENS and (2) AMENDED MOTION TO MODIFY PLAN BY
UTILIZING SUCH SALES PROCEEDS TO PAY OFF DEBTOR'S CHAPTER 13 PLAN**

1. Debtor filed his Chapter 13 proceeding with this Court on November 28, 2014. The Trustee has objected to confirmation.
2. After Debtor filed his case, but prior to his 341 meeting, he suffered a massive stroke and has since then been either in the hospital and/or a rehabilitation facility.
3. Debtor's sole source of income is his \$1,440.00 monthly Social Security payment. Debtor originally proposed to pay \$625.00 per month to the Trustee which Debtor believed would be sufficient to complete his Plan within sixty (60) months.
4. Because of Debtor's physical condition and confinement to a rehabilitation facility, he is not able to pay such monthly Trustee payments.
5. In Debtor's Schedule "A", he listed his residence at 2815 Lanecrest Drive, Charlotte, NC, 28215 which in Debtor's opinion has a fair market value of \$70,000.00 This residential real property is jointly owned by Debtor and his former wife, Margaret Worthy, as tenants in common. The residence is encumbered a first deed of trust in favor of Nationstar Mortgage, LLC in the amount of at least \$24,324.00.
6. When Debtor filed his petition, Nationstar mortgage had already sold the real property at a foreclosure sale and his petition was filed within the ten (10) day upset period.
7. There are judgement liens of (1) \$4,098.00 to Portfolio Recovery Associates, LLC and (2) \$2,639.00 to Barclays Bank Delaware which are liens on Debtor's interest in the real estate. These judgements are in Debtor's name alone. His ex-wife is not a party to those two judgements.
8. Debtor and his ex-wife, Margaret Worthy, have agreed to sell the real property and utilize the initial gross sales proceeds to pay the NationStar mortgage debt in full. The other judgment secured creditors which are in Debtor's name alone would be paid from Debtor's portion of the net sales proceeds.

Whatever moneys would be necessary to complete Debtor's Chapter 13 Plan would be paid from his portion of the net sales proceeds. These additional sums to be paid would include Debtor's attorney fees and the Chapter 13 Trustee's fees.

9. Debtor and his ex-wife have retained a real estate broker, Wilkerson ERA Powered Realty, who has located a purchaser for the real property for a sales price of \$65,000.00. A copy of the signed Contract Of Sale is attached as **EXHIBIT “A”** and made a part herein by express reference.
10. This sale will be an “all cash” deal and Purchaser wishes to close the sale by the end of May, 2015. Debtor will furnish the Chapter 13 Trustee a copy of the HUD-1 closing documents within ten (10) days of the sales closing
11. The sale of the real property and the use of the proceeds to fully pay the mortgage debt and also pay Debtor’s other secured and unsecured debts is not harmful to such creditors’ interests since they will be paid what they are due under Debtor’s Plan much sooner than would otherwise be possible.
12. Although Debtor believes his portion of the net sales proceeds will be sufficient to completely pay out his Chapter 13 Plan, Debtor also requests the authority to sell, free and clear of all liens, his Ford 650 Truck and his Ford 150 with the proceeds (if necessary) utilized to pay off his Chapter 13 Plan. Both trucks are fully paid for and there are no liens on their titles. If such sale(s) are not necessary, then Debtor will retain either one or both of such vehicles.

WHEREFORE, Debtor prays the Court for relief as follows:

1. That Debtor’s Motions as set forth above be heard upon shortened notice with the hearing date set for May 26, 2015, at 2:30 AM (or as reached on the Court’s published calendar), Courtroom 1-5, United States Bankruptcy Court, 401 West Trade Street, Charlotte, NC, 28202.
2. That Debtor be granted the authority to sell his jointly owned residence free and clear on all liens, with the liens from any of Debtor’s creditors secured by his portion of the real property transferred to Debtor’s portion of the gross and/or net sales proceeds.
3. That the outstanding mortgage balance, the realtor’s commission(s), any outstanding real estate taxes, and other costs of sale be subtracted from the \$65,000.00 purchase price. After such subtraction, then the remaining net proceeds will be split into two (2) equal portions, with one portion being paid to Debtor’s ex-wife free and clear of any secured liens which may have attached solely to Debtor’s interest in the real property.
4. That any liens which were secured by Debtor’s interest in the real property other than the mortgage lien and sale expenses be transferred and attach to Debtor’s portion of the net sales proceeds after the division of the net sales proceeds between Debtor and his ex-wife.
5. That the Debtor’s portion of the net sales proceeds after the payment of the outstanding mortgage balance and costs of sale, shall be paid to the Chapter 13 Trustee to be utilized in the payment of Debtor’s Chapter 13 Plan, including the payment of Debtor’s attorney’s fees, the Trustee’s fees, and any unsecured creditors of the Debtor.
6. That after the Trustee has paid out the balance of Debtor’s Chapter 13 Plan, the Trustee will distribute to the Debtor any funds remaining form the net sales proceeds.
7. That Debtor’s attorney receive a non-base attorney’s fee of \$450.00 for the (1) Motion For Authority To Sell set out in this combined, two part Motion, and a (2) further non-base fee of \$350.00 for the Motion To Modify Plan set out in this combined, two part Motion. Both such fees are as provided for in the WDNC local rules pertaining to non-base fee matters.

8. That Debtor receive such other and further relief as the Court deems just, proper, and necessary under the facts of this case.

This the 20th day of May, 2015.

/s/ Peter J. Underhill

PETER J. UNDERHILL, DEBTOR'S ATTORNEY
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IN RE:)
) 14 - 32013
JAMES E. WORTHY,)
) CHAPTER 13
Debtor,)
)

NOTICE OF HEARING

Debtor has filed (1) an AMENDED MOTION FOR AUTHORITY TO SELL REAL AND PERSONAL PROPERTY FREE AND CLEAR OF LIENS, and (2) an AMENDED MOTION TO MODIFY PLAN BY UTILIZING SUCH SALES TO PAY OFF DEBTOR'S CHAPTER 13 PLAN (the "Motion" or "Motions"). THESE AMENDED MOTIONS AND THE RELIEF REQUESTED THEREIN MAY AFFECT YOUR RIGHTS. IF YOU DO NOT HAVE AN ATTORNEY YOU MAY WISH TO CONSULT ONE.

The Court entered an Order on May 18, 2015 allowing these Motions to be heard on the next regularly scheduled Chapter13 Motions Hearing Date, Tuesday, May 26, 2015 at 2:30 PM (or as reached on the published court calendar) in Courtroom 1-5, United States Bankruptcy Courthouse, 401 West Trade Street, Charlotte, NC, 28202.

If you oppose the relief sought by Debtor, then you must either appear at the hearing date, time and place at forth above, or file pleadings opposing the same with the Clerk's office no later than Monday, May 25, 2015 setting out your opposition in detail to the granting of Debtor's Motion. You must serve a copy of such pleadings upon Debtor's attorney within the same time frame.

This the 20th day of May, 2015.

/s/ Peter J. Underhill

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CERTIFICATE OF SERVICE

I, Peter J. Underhill, the Debtor's attorney, do hereby certify that I served a copy of the foregoing (1) AMENDED MOTION FOR AUTHORITY TO SELL REAL AND PERSONAL PROPERTY FREE AND CLEAR OF LIENS, and (2) AMENDED MOTION TO MODIFY PLAN BY UTILIZING SUCH SALES PROCEEDS TO PAY OFF DEBTOR'S CHAPTER 13 PLAN upon all the creditors listed in Debtor's original creditor matrix filed with this Court and including any creditors or creditor's attorneys who have already made an appearance in this case, or who have filed a Proof Of Claim in this case claiming Debtor owes them or their client any money or property, and upon Mr. Warren G. Tadlock, Standing Chapter 13 Trustee by either (a) sending a copy of the same via electronic "e-mail" noticing as provided by the WDNC ECF system, or by (2) depositing a copy of the same, into an official depository of the USPO in a envelope addressed to Mr. Tadlock and all of the creditors at their last known mailing addresses with sufficient first class postage affixed thereto. A copy of Debtor's current creditor's mailing list is on the following page attached hereto and made a part herein by express reference.

This the 20th day of May, 2015.

/s/ Peter J. Underhill

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